

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FELIPPE MARCUS,

Plaintiff,

v.

CITY OF BUFFALO,
OFFICER CALVIS McKNIGHT,
OFFICER VINCENT HUMPHREY,
COMMISIONER BRYON
LOCKWOOD,
LIEUTENANT RONNY
BLATCHFORD,
THOMAS LYNCH,
TYLER FONVILLE,
AARON WATKINS,
JOSEPH JUSZKIEWICZ,

Defendants.



20-CV-316 (JLS)

DECISION AND ORDER

Pro se plaintiff, Felipe Marcus, filed an amended complaint on April 21, 2021, alleging Defendants use of excessive force while Marcus was in Defendants' custody, in violation of state and federal law. Dkt. 15. Defendants filed a motion for extension of time to serve discovery responses, Dkt. 124, and a motion for judgment on the pleadings or summary judgment, Dkt. 131. Plaintiff filed a motion to strike and enter default judgment. Dkt. 129.

On August 10, 2023, Judge Foschio issued a Report and Recommendation (“R&R”),¹ recommending that this Court deny Defendants’ motion for extension as moot, deny plaintiff’s motion to strike and for default judgment, and grant Defendants’ motion for judgment on the pleadings or alternatively grant in part and deny in part Defendants’ motion for summary judgment. Dkt. 149.

In particular, Judge Foschio determined that Plaintiff’s excessive force, deliberate indifference, and failure to intervene and supervise claims failed to name a specific Defendant who committed any violation of Plaintiff’s Fourth Amendment rights and should be dismissed pursuant to Federal Rule of Civil Procedure 12(c). *Id.*, at 17–18. Alternatively, Judge Foschio determined that all of Plaintiff’s federal claims and the state law battery claim should be dismissed based on Federal Rule of Civil Procedure 56. *Id.*, at 23, 25. The R&R further recommends that this Court dismiss Plaintiff’s conversion claim pursuant to Rule 12(c) or Rule 56. *Id.*, at 26.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

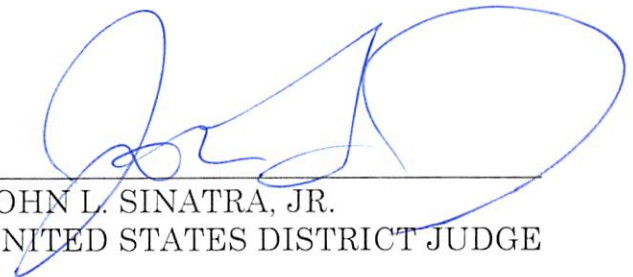
¹ On June 23, 2021, this Court referred the matter to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. section 636(b)(1)(A) and (B). Dkt. 26.

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on that *de novo* review, the Court accepts and adopts Judge Foschio's R&R.

The objections are overruled and, for each of the reasons set forth in the R&R, the case is DISMISSED.

SO ORDERED.

DATED: October 25, 2023
 Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE